Montana Department of Natural Resources and Conservation
Water Resources Division
Water Rights Bureau

ENVIRONMENTAL ASSESSMENT
For Routine Actions with Limited Environmental Impact

Part I. Proposed Action Description

1. APPLICANT/CONTACT NAME AND ADDRESS:

KENNETH R. AND STEPHANIE J. ANDERSON
5045 RABBIT OBRIEN CREEK RD
TROY MT 59935-9794

2. TYPE OF ACTION:

Surface Water Application for Beneficial Water Use Permit 76D 30156122

3. WATER SOURCE NAME:

O'Brien Creek (tributary of the Kootenai River)

4. LOCATION AFFECTED BY PROJECT:

The point of diversion (pump) is in the SWSWNW Section 32, Township 32N, Range 33W, Lincoln County, Montana.

The place of use is in the S2S2NW Section 32, Township 32N, Range 33W, Lincoln County, Montana.

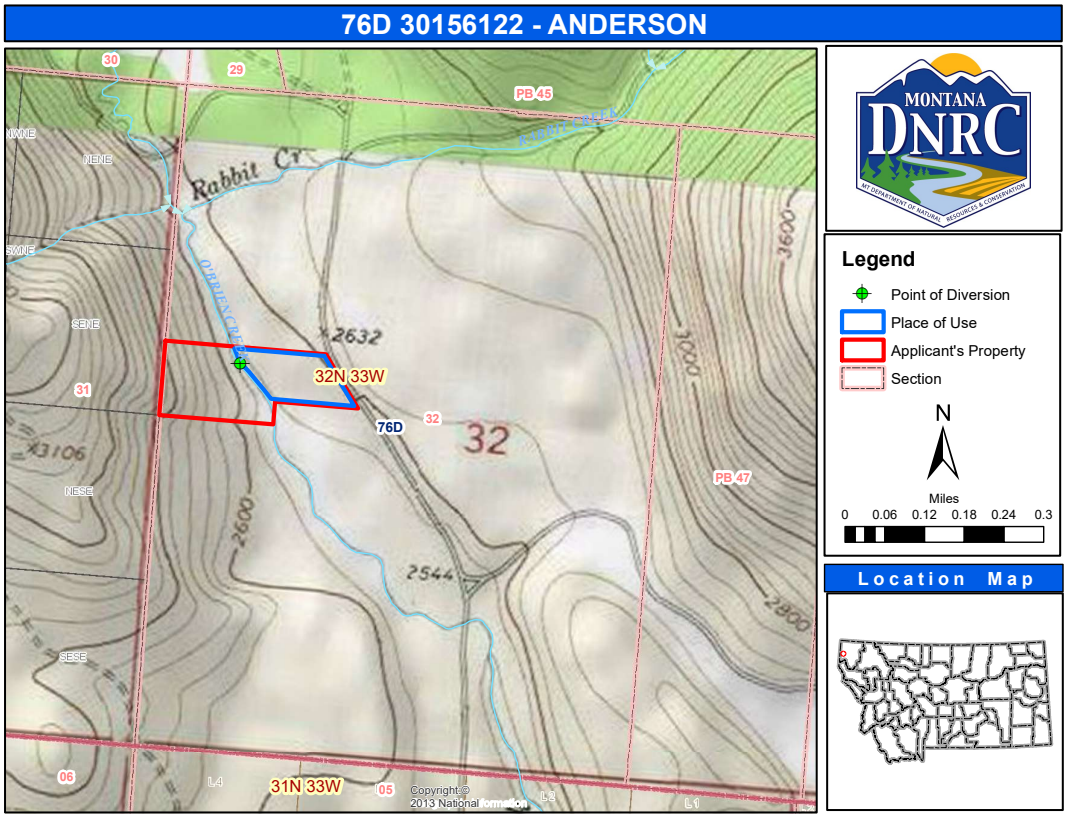

Figure 1. Map of the proposed place of use and point of diversion.

5. NARRATIVE SUMMARY OF THE PROPSED PROJECT, PURPOSE, ACTION TO BE TAKEN, AND BENEFITS:

This application proposes to divert water from O'Brien Creek (a tributary of the Kootenai River) using a pump. Applicant requests a 65.0 GPM flow rate up to an annual volume of 12.5 AF for irrigation of 5.0 acres of lawn and garden from April 15 – October 15, annually. The point of diversion (POD) is in the SWSWNW Section 32, Township 32N, Range 33W, Lincoln County, Montana. The place of use is in the S2S2NW Section 32, Township 32N, Range 33W, Lincoln County, Montana (Figure 1). Both the POD and place of use are in Tract A-1 in Certificate of Survey No. 2858. The points of diversion are in the Kootenai River Basin (76D) in an area that is not subject to water right basin closures or controlled groundwater area restrictions.

The DNRC shall issue a water use permit if the Applicant proves the criteria in 85-20-401 MCA are met.

6. AGENCIES CONSULTED DURING PREPARATION OF THE ENVIRONMENTAL ASSESSMENT:

- U.S. Fish and Wildlife Service (USFWS): National Wetlands Inventory Wetlands Mapper
- Montana Natural Heritage Program: Endangered, Threatened Species, and Species of Special Concern
- Montana Department of Fish Wildlife & Parks (DFWP): Dewatered Stream Information
- Montana Department of Environmental Quality (MDEQ): Clean Water Act Information Center
- U.S. Natural Resource Conservation Service (NRCS): Web Soil Survey

Part II. Environmental Review

1. **ENVIRONMENTAL IMPACT CHECKLIST:**

PHYSICAL ENVIRONMENT

1.1 WATER QUANTITY, QUALITY AND DISTRIBUTION

Water Quantity - *Assess whether the source of supply is identified as a chronically or periodically dewatered stream by DFWP. Assess whether the proposed use will worsen the already dewatered condition.*

The Applicant will divert water from O'Brien Creek, which is a tributary of the Kootenai River.

The Kootenai River is identified by the DFWP as a chronically dewatered stream from the Libby Dam to the Montana/Idaho border. Kootenai River is listed chronically dewatered due to dam regulation. The Department of Natural Resources and Conservation (DNRC) has calculated over 500,000 AF of physically available water in this reach of the Kootenai River during the period of diversion for this application. Minimal impacts are expected as a result of this project.

Determination: No significant impact.

Water Quality - *Assess whether the stream is listed as water quality impaired or threatened by DEQ, and whether the proposed project will affect water quality.*

According to the MDEQ CWAIC 2020 Water Quality Information the Kootenai River is listed as:

- Water Quality Category 5: Waters where one or more applicable beneficial uses are impaired or threatened, and a TMDL is required to address the factors causing the impairment or threat;
- Use Class B-1: Waters classified as suitable for drinking, culinary, and food processing purposes after conventional treatment; bathing, swimming and recreation; growth and propagation of salmonid fishes and associated aquatic life, waterfowl and furbearers; and agricultural and industrial water supply;
- "Fully supporting" for: primary contact recreation, agriculture, and drinking water; and,
- "Not fully supporting," for: aquatic life with probable causes for this designation being temperature (impacts from hydro structure flow regulation/modification and dam or impoundment) and flow regime modification (impacts from hydro structure flow regulation/modification and dam or impoundment).

Determination: No significant impact.

Groundwater - *Assess if the proposed project impacts ground water quality or supply. If this is a groundwater appropriation, assess if it could impact adjacent surface water flows.*

Determination: N/A, project does not involve groundwater.

1.2 DIVERSION WORKS - *Assess whether the means of diversion, construction and operation of the appropriation works of the proposed project will impact any of the following: channel impacts, flow modifications, barriers, riparian areas, dams, well construction.*

Applicant will divert water from O'Brien Creek through a screened 2.0-inch intake pipe at a maximum rate of 65.0 GPM using a gas-powered Honda 5.0-HP centrifugal pump. Water will be conveyed through 300-feet of 1.5-inch pipe to a 2,400-gallon holding cistern located on the property at an elevation 50-feet higher than the pump. From the holding cistern, water will be gravity fed through garden hose to consumer-grade lawn and garden sprinklers. Water will be diverted from O'Brien Creek to fill the holding cistern as needed for watering the lawn and garden.

Applicant tested their pump under operating conditions and determined their diverted flow rate by performing a timed cistern-fill test. The Applicant found that it took 37 minutes to fill the cistern to the 2,400-gallon mark, which equates to a flow rate of 65.0 GPM (2,400 gallons ÷ 37 minutes = 65.0 GPM).

The Department finds the system capable of producing and distributing the requested flow rate of 65.0 GPM and annual volume of 12.5 AF.

No impacts are expected from the construction or operation of this system.

Determination: No significant impact.

1.3 UNIQUE, ENDANGERED, FRAGILE OR LIMITED ENVIRONMENTAL RESOURCES

Endangered and Threatened Species - *Assess whether the proposed project will impact any threatened or endangered fish, wildlife, plants, aquatic species, or any "species of special concern," or create a barrier to the migration or movement of fish or wildlife. For groundwater, assess whether the proposed project, including impacts on adjacent surface flows, would impact any threatened or endangered species or "species of special concern."*

The Montana Natural Heritage Program website was reviewed to determine if there are any threatened or endangered fish, wildlife, plants, aquatic species, or any "species of special concern" in the project area that could be impacted by the proposed project. Six animal species of concern (Table 1) were identified within the general project area. Of these species, the Bull Trout *(Salvelinus confluentus)* and Grizzly Bear *(Ursus arctos)* are listed as threatened by the USFWS. An adequate quantity of water will still exist in the surface water source to maintain existing populations of Bull Trout, should they exist there currently. The issuance of a water right permit is not anticipated to cause any significant impacts to species of concern.

Table 8: Legal availability of O'Brien Creek at the POD

Common Name	Scientific Name	USFWS – Status of a taxon under the federal Endangered Species Act of 1973
Fisher	*Pekania pennanti*	
Grizzly Bear	*Ursus arctos*	LT
Wolverine	*Gulo gulo*	
Bull Trout	*Salvelinus confluentus*	LT; CH
Westslope Cutthroat Trout	*Oncorhynchus clarkii lewisi*	
Columbian Snowfly	*Utacapnia columbiana*	

Determination: No significant impact.

Wetlands - *Consult and assess whether the apparent wetland is a functional wetland (according to COE definitions), and whether the wetland resource would be impacted.*

The areas directly adjacent to O'Brien Creek on the subject property are listed as "Freshwater Forested/Shrub Wetland" and "Forested/Shrub Riparian." These areas will not be irrigated, nor will they be significantly disturbed by the diversion system.

Determination: No significant impact.

Ponds - *For ponds, consult and assess whether existing wildlife, waterfowl, or fisheries resources would be impacted.*

Determination: N/A, project does not involve ponds.

1.4 GEOLOGY/SOIL QUALITY, STABILITY AND MOISTURE - *Assess whether there will be degradation of soil quality, alteration of soil stability, or moisture content. Assess whether the soils are heavy in salts that could cause saline seep.*

It is not anticipated that the proposed lawn and garden use will have a negative impact on the soil quality, stability, or moisture content. The soils in the project area are *Sunroad-Jazzbo complex, 0 to 8 percent slopes* formed from volcanic ash over glaciolacustrine deposits derived from metasedimentary rock parent material. These soils have a moderately high to high capacity to transmit water. In general, soils within the place of use are not likely susceptible to saline seep.

Determination: No significant impact.

1.5 VEGETATION COVER, QUANTITY AND QUALITY/NOXIOUS WEEDS - *Assess impacts to existing vegetative cover. Assess whether the proposed project would result in the establishment or spread of noxious weeds.*

It is not anticipated that issuance of a water use permit will significantly impact existing native vegetation or contribute to the establishment or spread of noxious weeds in the project area. Noxious weed prevention and control will be the responsibility of the landowner, who must follow all applicable noxious weed regulations.

Determination: No significant impact.

1.6 AIR QUALITY - *Assess whether there will be a deterioration of air quality or adverse effects on vegetation due to increased air pollutants.*

There will be no impact to air quality associated with issuance of the proposed permit for beneficial use of groundwater.

Determination: No significant impact.

1.7 HISTORICAL AND ARCHEOLOGICAL SITES - *Assess whether there will be degradation of unique archeological or historical sites in the vicinity of the proposed project if it is on State or Federal Lands. If it is not on State or Federal Lands simply state NA-project not located on State or Federal Lands.*

Determination: N/A, project not located on State or Federal Lands.

1.8 DEMANDS ON ENVIRONMENTAL RESOURCES OF LAND, WATER, AND ENERGY - *Assess any other impacts on environmental resources of land, water, and energy not already addressed.*

All impacts to land, water, and energy have been identified and no further impacts are anticipated.

Determination: No significant impact.

HUMAN ENVIRONMENT

1.9 LOCALLY ADOPTED ENVIRONMENTAL PLANS AND GOALS - *Assess whether the proposed project is inconsistent with any locally adopted environmental plans and goals.*

The project is consistent with planned land uses.

Determination: No significant impact.

1.10 ACCESS TO AND QUALITY OF RECREATIONAL AND WILDERNESS ACTIVITIES - *Assess whether the proposed project will impact access to or the quality of recreational and wilderness activities.*

The proposed project will not inhibit, alter, or impair access to present recreational opportunities in the area. The project is not expected to create any significant pollution, noise, or traffic congestion in the area that may alter the quality of recreational opportunities. The proposed place of use and diversion do not exist on land designated as wilderness.

Determination: No significant impact.

1.11 HUMAN HEALTH - *Assess whether the proposed project impacts human health.*

No negative impact on human health is anticipated from this proposed use.

Determination: No significant impact.

1.12 PRIVATE PROPERTY - *Assess whether there are any government regulatory impacts on private property rights. If yes, analyze any alternatives considered that could reduce, minimize, or eliminate the regulation of private property rights*.

No government regulatory impacts on private property rights.

Determination: No impact.

1.13 OTHER HUMAN ENVIRONMENTAL ISSUES - *For routine actions of limited environmental impact, the following may be addressed in a checklist fashion.*

Impacts on:

(a) *Cultural uniqueness and diversity?* None identified.

(*b)* *Local and state tax base and tax revenues?* None identified.

(c) *Existing land uses?* None identified.

(*d)* *Quantity and distribution of employment?* None identified.

(e) *Distribution and density of population and housing?* None identified.

(f) *Demands for government services?* None identified.

(g) *Industrial and commercial activity?* None identified.

(h) *Utilities?* None identified.

(i) *Transportation?* None identified.

(j) *Safety?* None identified.

(k) *Other appropriate social and economic circumstances?* None identified.

2. SECONDARY AND CUMULATIVE IMPACTS ON THE PHYSICAL ENVIRONMENT AND HUMAN POPULATION:

Secondary Impacts: None identified.

Cumulative Impacts: None identified.

3. DESCRIBE ANY MITIGATION/STIPULATION MEASURES:

None.

4. DESCRIPTION AND ANALYSIS OF REASONABLE ALTERNATIVES TO THE PROPOSED ACTION, INCLUDING THE NO ACTION ALTERNATIVE, IF AN ALTERNATIVE IS REASONABLY AVAILABLE AND PRUDENT TO CONSIDER:

The only alternative to the proposed action would be the no action alternative. The no action alternative would not authorize the diversion of surface water at this location.

Part III. Conclusion

1. PREFFERED ALTERNATIVE:

Issue a water use permit if the Applicant proves the criteria in 85-2-311 MCA are met.

2. COMMENTS AND RESPONSES:

None.

3. FINDING:

Based on the significance criteria evaluated in this EA, is an EIS required? **___Yes _X_No**

If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action:

No significant impacts related to the proposed project have been identified.

4. NAME OF PERSON(S) RESPONSIBLE FOR PREPARATION OF EA:

Name: Travis Wilson
Title: Water Resource Specialist
Date: June 28, 2023